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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/068,664

02/06/2002

Chuan Li

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8973

7590

05/16/2006

Chuan Li
Apt. 158
7908 Avenida Navidad
San Diego, CA 92122

EXAMINER

KETTER, JAMES S

ART UNIT

PAPER NUMBER

1636

DATE MAILED: 05/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/068,664

Applicant(s)

LI, CHUAN

Examiner

James S. Ketter

Art Unit

1636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-15 and 21-25 is/are pending in the application.
- 4a) Of the above claim(s) 6-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 21-25 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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A supplemental restriction to one of the following inventions is required under 35 U.S.C.

121:

- I. Claims 21-25, drawn to a plasmid comprising SEQ ID NO:32, classified in class 435, subclass 320.1.
- II. Claims 21-25, drawn to a plasmid comprising SEQ ID NO:33, classified in class 435, subclass 320.1.
- III. Claims 21-25, drawn to a plasmid comprising SEQ ID NO:34, classified in class 435, subclass 320.1.
- IV. Claims 21-25, drawn to a plasmid comprising SEQ ID NO:35, classified in class 435, subclass 320.1.
- V. Claims 21-25, drawn to a plasmid comprising SEQ ID NO:36, classified in class 435, subclass 320.1.
- VI. Claims 21-25, drawn to a plasmid comprising SEQ ID NO:37, classified in class 435, subclass 320.1.
- VII. Claims 21-25, drawn to a plasmid comprising SEQ ID NO:38, classified in class 435, subclass 320.1.
- VIII. Claims 21-25, drawn to a plasmid comprising SEQ ID NO:39, classified in class 435, subclass 320.1.
- IX. Claims 21-25, drawn to a plasmid comprising SEQ ID NO:40, classified in class 435, subclass 320.1.
- X. Claims 21-25, drawn to a plasmid comprising SEQ ID NO:41, classified in class 435, subclass 320.1.

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The inventions are distinct, each from the other because of the following reasons:

Inventions of Groups I-X are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the different inventions are drawn to distinct plasmids having broadly different designs as well as functions (modes of operation and effects), which would not render one another obvious, i.e., would be capable of supporting separate patents, thus being patentably distinct.

Because these inventions are independent or distinct for the reasons given above and the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper. In view of the limited and heavily utilized sequence search capacity at the USPTO, only one sequence unrelated to other ordinarily may be searched in an application.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

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Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

The present restriction requirement is supplemental to the standing restriction and election. Claims 6-15 continue to stand non-elected and withdrawn from consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the paper filed 12 January 2004.

Any inquiry concerning this communication or earlier communications from the Examiner with respect to the examination on the merits should be directed to James Ketter whose telephone number is (571) 272-0770. The Examiner normally can be reached on M-F (9:00-6:30), with alternate Fridays off.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Remy Yucel, can be reached at (571) 272-0781.


Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to (571) 272-0547.

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Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public.

For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.

Jsk
May 3, 2006



JAMES KETTER
PRIMARY EXAMINER